



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

VIA EMAIL

July 10, 2019

Jimmy Tobias
MuckRock News
411A Highland Ave
Dept. MR 49294
Sommerville, MA 74283

Re: OIG-2019-00207

Dear Jimmy Tobias:

This is in response to your Freedom of Information Act (FOIA) request dated June 10, 2019 which was received by the Office of Inspector General (OIG) on the same date. You request the following information under the FOIA, 5 U.S.C. § 552: Any written or electronic communications, including email attachments, sent or received by Gail Ennis that contain the word "WilmerHale". This request also seeks any written or electronic communications, including email attachments, between Gail Ennis and any agent, representative, employee or client of the law and lobbying firm WilmerHale.

For purposes of this request, you have been categorized as a representative of the news media. As such, we may charge you for some of our duplication costs, but we will not charge you for our search or review costs; you also are entitled to up to 100 pages of photocopies (or an equivalent volume) for free. *See* [43 C.F.R. § 2.39](#). If, after taking into consideration your fee category entitlements, our processing costs are less than \$50.00, we will not bill you because the cost of collection would be greater than the fee collected. *See* [43 C.F.R. § 2.49\(a\)\(1\)](#). In this case, no fee has been assessed.

We obtained the documents you seek and conducted a review of the material you requested. After reviewing this information we have determined that we may release 12 pages of responsive documents with FOIA redactions pursuant to exemption 5 U.S.C. § 552 (b)(5) and (b)(6).

FOIA requires that agencies generally disclose records. Agencies may only withhold requested records only if one or more of nine exemptions apply.

Exemption 5 allows an agency to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency." 5 U.S.C. § 552(b)(5). One privilege available to government agencies is the deliberative process privilege. The deliberative process privilege protects materials that are both predecisional and deliberative. The deliberative process privilege protects the decision-making process of

government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) assure that subordinates will feel free to provide the decision maker with their uninhibited opinions and recommendations; (2) protect against premature disclosure of proposed policies; and (3) protect against confusing the issues and misleading the public. This privilege covers records that reflect the give-and-take of the consultative process” and may include “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the OIG. Their contents have been held confidential by all parties and public dissemination of these drafts would have a chilling effect on the OIG’s deliberative processes; expose the agency’s decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions.

Exemption 6 permits the withholding of information contained in “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). The term “similar files” encompasses any government record that contains a particular individual; the term is not limited to records contained in personnel or medical files.

Exemption 6 requires weighing the privacy interests in nondisclosure against the public interest in the release of the records. For a privacy interest to exist, the information must be such that there is a substantial probability that a disclosure will cause an interference with personal privacy and that disclosure could subject the individuals to unwanted intrusions. The individuals named in your FOIA request could suffer the harms contemplated under FOIA Exemption 6 if released, consequently, we find a privacy interest exists in this case. However, even if a privacy interest exists in certain information, we must disclose the information if the privacy interest is outweighed by a significant public interest. The test for determining whether a public interest sufficient to justify release of the requested information exists is whether disclosure of the information would shed light on an agency’s performance of its statutory duties. You have not demonstrated how disclosure of the responsive material would reveal how OIG functions, as a result, we find that you have not provided sufficient information to demonstrate that the personal information at issue would inform the public in any meaningful way about the workings of the government. Therefore, you have not established that the public interest in this case outweighs any privacy interests and we must withhold this information under FOIA Exemption 6.

We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA’s general rule of disclosure.

If you disagree with this response, you may appeal this response to the OIG’s FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal **no later than 90 workdays** from the date of this letter.

Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the OIG's response is in error. You must also include with your appeal copies of all correspondence between you and the OIG concerning your FOIA request, including your original FOIA request and the OIG's response. Failure to include with your appeal all correspondence between you and the OIG will result in the OIG's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal. The OIG FOIA/Privacy Act Appeals Office Contact Information is the following:

Office of the Inspector General
U.S. Department of the Interior
1849 C Street, NW
MS-4428
Washington, DC 20240
Attn: FOIA/Privacy Act Appeals Office

Telephone: (202) 208-6742
Fax: (202) 219-1944
Email: oig_foiaappeals@doioig.gov

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. *See* [5 U.S.C. 552\(c\)](#). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001

E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Facsimile: 202-741-5769
Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the OIG's FOIA & Privacy Act Appeals Officer.

However, should you need to contact me, my telephone number is (202) 208-6464, and the email is foia@doioig.gov.

Sincerely,

Mildred H. Washington
Mildred H. Washington
Government Information Specialist

Enclosures